Inland Wetlands Commission

MINUTES Regular Meeting May 23, 2018

7:00 p.m. main level meeting room

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

ALTERNATES PRESENT: Mr. Kassis, Mr. Matthews

STAFF PRESENT: Mrs. Hill

ALSO PRESENT: Mr. Comer, Mr. Pryor, Mr. Woodruff, Mrs. Solomon, Mr. Charles, Mr. W. Johnson, Mr. Hayden, Mrs. E. Johnson

Mr. Wadelton called the meeting to order at 7:05 p.m. and seated Members Bennett, Davis, LaMuniere, Papsin, and Wadelton.

MOTION: To include the following subsequent business not already posted on the agenda: V. New Applications: C. Jacobs/257 West Shore Road/#IW-18-23/Repair Wall, Install Stone Patio, D. Angell/47 West Shore Road/ #IW-18-24/Remove Existing Terrace, Restore Shoreline, Install New Terrace, Steps, and Native Plants: IX. Communications: B. 5/22/18 Email to Mrs. Hill, from Ms. Zitter re: Deperno and Fry/63 Wykeham Road, C. 5/17/18 Memorandum of Decision/Weeks vs IWC. By Mr. Papsin, seconded by Mr. LaMuniere, passed 5-0.

Consideration of the Minutes

MOTION: To accept the 5/9/18 Regular Meeting minutes as written. By Mr. Papsin, seconded by Mr. LaMuniere, and passed 5-0.

Pending Applications

101 Wykeham Road, LLC/101 Wykeham Road/#IW-18-04/Inn: At the last meeting, the public hearing had been continued to May 30, 2018 at 7:00 p.m. in the upper level meeting room. Mr. Wadelton noted that two documents had been submitted since then and asked the commissioners to review them.

Bardel/166 Baldwin Hill Road/#IW-18-19/Clean Out Fire Pond: Representing the Fire Department, Mr. Woodruff noted the location of the pond and said the dry hydrant had been installed ten years ago. He stated the only work proposed was maintenance to clean the silt out of the pond; the hydrant and feed pipe were in good condition and did not need any repairs. He said a silt fence would be installed, the excavated sediment spread on site, and the fence would remain in place until grass was growing.

MOTION: To approve Application #IW-18-19 for Bardel/ 166 Baldwin Hill Road to clean out the fire pond; 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. Papsin, seconded by Mr. LaMuniere, passed 5-0.

New Applications

Comer/101 Lower Church Hill Road/#IW-18-21/Driveway Crossing and Upland Activites: Dwelling, Pool, Septic: Mr. Pryor of Land Tech represented the applicant. The map, “Proposed Site Improvements, Overall Site Plan,” by Land Tech, dated 2/13/18 was reviewed. Mr. Pryor noted the irregular shape of the lot and said the wetlands crossing in the narrow part of the lot was needed to reach the interior building site. The wetlands had been flagged and he pointed out their location and that of an intermittent watercourse. He said the only direct impact to wetlands proposed was the driveway crossing. The challenging topography was noted and Mr. Pryor said the driveway route chosen required the least regrading and blasting to meet the driveway grade requirements. He said a retaining wall would be installed along the lower side of the driveway, which would help to limit how much regrading was necessary. The proposed driveway grade is 10% to 12%. Mr. Matthews asked for the length of the crossing. Mr. Pryor said it would cross a 20 ft. wide section of wetlands. He noted a 48 inch culvert, which would be half filled to provide a natural bottom, was proposed. Mr. Papsin asked if trees would be cut along the driveway. Mr. Pryor said they would, but not in the wetlands and that buffer plants were proposed. Mr. LaMuniere noted a sequence of construction had not yet been submitted. Mrs. Hill noted the application review included questions about the proposed turnaround at the driveway entrance and its proximity to what she thought might be a vernal pool on the adjoining property. The drainage and slopes in the area were briefly noted. Mr. Matthews asked if the installation of a bridge had been considered. Mr. Pryor said a bridge was not warranted, but he would consider a request by the Commission for the installation of a second culvert if it thought it was necessary. Mr. Davis asked how drainage from the dwelling would be handled. Mr. Pryor pointed out the location of a 10 ft. diameter plunge pool and also the proposed stockpile area and where silt fencing would be installed. Mr. Papsin asked if there was a planting plan. Mr. Pryor responded that 300 plants were specified along the edge of the driveway, and that he would more fully address this. Mr. LaMuniere asked why the route of the old wood road had not been followed. Mr. Pryor answered the proposed route was needed to meet the driveway grade requirements and to avoid ledge.

West Mountain Farm, LLC./6 West Mountain Road/#IW-18-22/ Application for Exemption/Tree Clearing for Farm: Mr. Wadelton explained to Mr. Kassis, Commission alternate, that he could not represent himself before the Commission. Mr. Kassis said he was recusing himself, that he admitted to cutting the trees, and that he had stopped work when Mrs. Hill had told him to stop. He then left the table. Mr. Wadelton explained the Commission would not proceed with consideration of this application while the violation was unresolved; the violation had to be addressed first. Further discussion regarding this application was tabled and Mr. Wadelton said the violation would be discussed later on the agenda under Enforcement.

Jacobs/257 West Shore Road/#IW-18-23/Repair Wall, Install Patio: Mr. Monteleone, contractor, presented a photo showing the current condition of the property. He pointed out the existing wooden wall, which he proposed to replace with a dry stonewall and the area where steps and a 15’ X 40’ flagstone patio were proposed. Mr. Wadelton noted all of the proposed activities were in the upland review area. Mr. Bennett asked how close the work would be to the shoreline. Mr. Monteleone said it would be 3 to 4 ft. from the existing rip rap. Mr. Bennett asked for a scaled drawing with dimensions. Mr. Matthews asked if the rip rap would be disturbed. Mr. Monteleone said it would not except for the new steps. Mr. Matthews asked if the rip rap would be restored. Mr. Monteleone said this would be done if required by the Commission. Mr. LaMuniere noted the Commission is concerned about maintaining the permeability of the area so close to the lake. Mr. Monteleone said the patio stones would be set in stone dust and that putting in the patio would prevent the area from washing out as it does now. Mr. Papsin was concerned about the proposed removal of the grass because it is permeable and said plantings were preferred over stone. Mr. Matthews noted stone dust was pretty impervious. Mr. Davis said the Commission would like runoff to infiltrate before it reaches the lake. A discussion followed regarding possible improvements to the plan such as decreasing the size of the patio, decreasing the size of the stones to be used, and using sod between the stones instead of the dust. The commissioners asked for a more detailed plan, which should include the contour of the land and the location of any nearby road culverts and where they drain to. Mr. Hayden of the Lake Waramaug Task Force offered his services to help draft the plan. Mr. Matthews asked if the steps would end at the lakeshore. Mr. Monteleone said the existing steps are seasonally submerged and that he wanted to top them with bluestone. Mr. Matthews asked if the steps could end at the shoreline. Mr. Monteleone responded that was how the property owner reached her dock. Mr. Matthews thought a removable bridge should be considered. Mr. LaMuniere recommended that Mr. Hayden be consulted. The commissioners thanked Mr. Monteleone for being open minded to consider better solutions.

Angell/47 West Shore Road/#IW-18-24/Remove Existing Terrace, Restore Shoreline, Install New Terrace, Steps, Native Plants: Mr. Sabin, landscape architect, presented the plan, “Lakefront Restoration Plan,” by Mr. Sabin, dated 4/20/18. He noted that at the last meeting the applicant had been asked to meet again with Mr. Hayden and the Lake Waramaug Assoc., the holder of the conservation easement, and said he had worked with Mr. Hayden on the plan. But after reviewing it, the LWA sent another denial letter deferring to the Commission. Mr. Sabin explained the principal differences from the previous plan. The boulder shoreline would be moved to where it used to be, a vegetated buffer would be created between the lake and the terrace, and the excavation into the embankment would be reduced. He said that 30 cu. yards of material would be excavated to create the 22’ X 10’ terrace site and the patio stone would be laid on 8 inches of crushed stone. Stone dust would be placed between the stones to take the runoff. The existing chunks of concrete will be removed and additional ferns planted in the existing buffer. When Mr. Bennett asked about the location of the boulder shoreline, Mr. Sabin said it would follow the shoreline shown in Mr. Ajello’s photos. Mr. Davis noted there was currently a violation on the property. Mr. Sabin stated this proposal would be remediation for that violation. Mr. Hayden confirmed that he had met with Mr. Sabin and the past director of the Task Force and they all thought the proposed buffer was very important as it would be a good example of what should be done around the lake. Work on the existing sediment basin was briefly discussed. A rock check dam will be installed and Mr. Sabin will add this to the plan. Mr. Sabin did not want to include a required maintenance schedule because he feared such routine disturbance would give invasive plants an opportunity to move in. Mr. Papsin asked for a maintenance plan for the buffer, but Mr. Sabin noted it had been functioning well for ten years without one. Mr. Hayden noted he had done auger borings and had found there was 4 inches of top soil on top of rubble. The conservation easement requirements per PA 05-124 were discussed and it was again noted the holder of the easement had not approved the plan. Mr. Bennett stated the Commission could approve the application if it complied with the Regulations, although if it did so, the LWA might protest. The timing of the proposed work was discussed and the July 1 deadline for the removal of the terrace was noted. Mr. Sabin said they would put in a boom if the work would be done during high water and said the work would take 1 to 2 weeks.

Enforcement

16 West Mountain Farm, LLC./6 West Mountain Road/Unauthorized Tree Cutting in Wetlands and the Regulated Area: Mr. Wadelton again explained the Commission would not deal with the exemption application while there was an existing violation. The commissioners reviewed both Mrs. Hill’s 5/23/18 report and the undated letter of complaint from Mrs. Johnson with attached color photos of the violation and appropriate documentation from the CT Farm Bureau Association re: whether farming is a use permitted by right in wetlands. Mr. Davis noted a major issue was whether the proposed work would qualify for an exemption. Mr. Wadelton stated the Inland Wetlands and Watercourses Act clearly states that exemptions for clearcutting in wetlands are only allowed to expand agricultural crop land. He noted, too, that the activity was not permitted and had taken place directly in the wetlands. Mr. Wadelton said for any other violation of this kind the property owner would be fined according the schedule in the Ordinance and an application to correct the violation required. It was the consensus to hold to this principle. The commissioners did not want it to appear that Mr. Kassis would receive favorable treatment. Mrs. Johnson, adjoining neighbor, said she did not think the land proposed for farming was suitable because it is an ankle deep swamp. It was noted it was up to the property owner to propose how to correct the violation and up to the Commission to determine whether restoration should be required. Mrs. Johnson said the only exemption for clearcutting in wetlands would be for the expansion of agricultural crop land and so the proposal did not qualify for the exemption requested; there being no existing crop land to expand. Mr. Wadelton stated that because this land is in a regulated area, a permit or an approved exemption is required before any work is done. Mr. Hayden asked if a soil scientist had delineated the wetlands. Mrs. Hill said, yes. Mr. LaMuniere noted there is a large range of state regulations regarding what qualifies as agricultural activity. Mrs. Johnson asked who would make the determination about whether the area should be restored or what other corrective measures should be taken. Mr. Wadelton responded that the Commission would. Mr. Johnson said again that the Regulations specifically state that clearcutting in wetlands can qualify for an exemption only for the expansion of existing agricultural crop land and so the recent cutting would not qualify because there is no existing crop land to expand. Mrs. Johnson said this was an ethical violation by a commissioner that should be discussed by the IWC. Mr. Bennett responded that the IWC is not a disciplinary body. Mr. Wadelton again explained this is a two step process; that the violation would be handled first. It was the consensus not to conduct a site inspection until the application to correct the violation is received. Mr. Wadelton said it should be submitted for the next meeting. Mr. Matthews thanked Mrs. Johnson for her letter and citizen involvement.

Haddad/141 West Shore Road: Mr. Hayden said the Haddads had contacted him and he would meet with them on site to discuss how to address the current violations on the property. Mrs. Hill noted a notice of violation had been sent. Mr. Papsin and Mr. LaMuniere noted that when the original permit had been approved, the Commission had been adamant that there was to be no clearing along the stream.

Smith/35 East Shore Road: There had been a complaint that large machinery had been operating along and possibly in the river to cut down and saw up trees, but by the time one of the commissioners had driven by to inspect there was nothing going on. Mrs. Hill had written a letter to Mrs. Smith reminding her what activities were regulated and so required a permit prior to beginning work. She noted the person who had complained thought enforcement action should be taken. After a brief discussion, it was the consensus that the letter sent had been an adequate response.

Woodruff/3 West Shore Road: Mrs. Hill explained Mr. Woodruff had recently asked that his notice of violation be removed from the Town Land Records. She briefly gave the history of the 1999 violation and subsequent cease and desist order. It was noted that Mr. Woodruff had made this request twice in the past and had been denied both times. Mrs. Hill said with this request he had submitted a photo taken in 1969, which showed a large puddle in the driveway, proving that no subsequent work he had done to maintain the driveway had caused drainage problems. The situation was briefly discussed. It was the consensus that because Mr. Woodruff had never removed the trees and brush he had cut on the river side of the driveway, nor had he completed any of the other work required per the cease and desist order, the notice on the Land Records would not be removed.

Ingrassia/292 Bee Brook Road: Mr. Matthews was not sure that the driveway extension had been put in as approved; he did not recall that it would cross such a large section of wetlands. He said he would have recommended a bridge if he had realized where the crossing would be. The map, “Proposed Driveway Extension Plan,” by Mr. Neff, dated 4/7/18 was reviewed.

Jurisdictional Questions: Mrs. Hill asked whether maintenance work such as painting and replacing windows on a building within 100 feet of a wetlands or watercourse would require an IW permit. The commissioners said if there was absolutely no soil disturbance, a permit would not be required. She also asked whether work to install a fence when the posts were already in would require an IW permit. The answer was the same; if there will be no soil disturbance at all, a permit is not required.

Correspondence

The 5/22/18 email from Ms. Zitter to Mrs. Hill was discussed. She reported that an expert, whose four page resume had been attached, had advised her that wood chip paths would not adversely impact any wetlands critters. The commissioners thought, then, that Ms. Zitter could proceed to draw up plans for the wood chip paths.

The Memorandum of Decision, dated 5/17/18 for Weeks vs the IWC was available for those who wanted to review it. It was noted that all appeals of IWC approvals have been upheld by the court.

Other Business

Mr. Hayden advised the Commission that he would notify property owners around the lake of the upcoming intentional draw down of the lake, which will take place so that the gate valve can be replaced, so that they can apply in advance for any work they would like to do while the lake level is low. Mrs. Hill was asked to check on whether that permit had expired.

The meeting was adjourned at 9:00 p.m.

FILED SUBJECT TO APPROVAL Respectfully submitted,

Janet M. Hill, Land Use Administrator