

Inland Wetlands Commission

MINUTES

Regular Meeting

June 12, 2019

7:00 p.m.

Main Level Meeting Room

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

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

STAFF PRESENT: Ms. White, Mr. Tsacoyannis

ALSO PRESENT: Mr. Johnson, Ms. Dupuis, Mr. Worcester, Mr. Sabin, Ms. Hill, Mr. and Ms. Turoczi, Mr. Francis, Mr. Charles, Mr. Devendorf, Ms. Smith, Ms. Rodgers, Members of the Public

Call to Order

Mr. Wadelton called the meeting to order at 7:00 p.m. and seated himself, Mr. Papsin, Mr. LaMunier, Mr. Bennett & Mr. Davis.

Consideration of the Minutes

[Beg. of Discussion 00:34]

The regular meeting minutes of May 22, 2019, were considered.

MOTION: To accept the Regular Meeting Minutes of 5/22/19 as submitted by Mr. Papsin, seconded by Mr. Bennett, passed by 5-0 vote.

[End of Discussion 00:49]

Subsequent Business

[Beg. of Discussion 00:50]

MOTION: to add discussion of work being done within the review area at 52-60 River Road under Other Business on the agenda, by Mr. Papsin, seconded by Mr. Bennett, passed by 5-0 vote.

[End of Discussion 01:17]

Pending Applications

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

[Beg. of discussion 01:20]

The Commission did not receive any new documentation, and no one was present to speak about the application. The Commission asked the Land Use Office to contact the applicant to inform them that if additional documentation is not received by the June 26, 2019, Meeting the Commission would have to deny the application.

[End of Discussion 01:94]

West Mountain Builders (for Oberdorf)/151 West Shore Rd/Permit #IW-19-22/Repair drainage pipe in regulated area:

[Beg. of discussion 02:00]

Mr. Johnson of West Mountain Builders was present to represent the Oberdorfs, property owners of 151 West Shore Rd. Mr. Johnson presented the plan titled "Septic System Repair Plan" prepared for Oberdorf House Reconstruction by Brian Neff, L.E. dated 10/8/07. He signed and dated his hand-drawn revisions indicating the location of the silt fence and erosion controls on the plan and included the chip sealing in the sequence of construction on the application. There were no further questions or comments from the Commissioners.

MOTION: To approve Permit #IW-19-22 for West Mountain Builders (for Oberdorf) at 151 West Shore Rd, to repair drainage pipe in regulated area, per the plan titled "Septic System Repair Plan" prepared for Oberdorf House Reconstruction by Brian Neff, L.E. dated 10/8/07 with handwritten revision date of 6/12/19, sheet 1 of 1, for two years with 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 and seconded by Mr. LaMunier, passed by 5-0 vote.

[End of discussion 06:05]

New Applications

Sarjeant/9 Church Hill Rd/Permit #IW-19-21/Add shed roof to storage area and improve drainage:

[Beg. of discussion 06:14]

Mr. Sarjeant, property owner, was present. Mr. Sarjeant distributed copies of an enlarged section of an existing survey where the proposed work is to be done. He explained that he is proposing to put a shed roof on an existing storage area to repair and improve the drainage. The proposed gutters will be joined with the existing drain on the house. Mr. Sarjeant informed the Commissioners that there would be no digging. The 3 piers will be on big stones and attached to the wall and tied into the good part of the retaining wall. The Commissioners looked at the picture of the rotting retaining wall that is part of the storage area. Mr. Sarjeant stated that he did not know where the drain discharges, it is not in the bank of Canoe Brook, but he feels it might discharge into the perforated pipe that is under the deck and slowly drains into the gravel. The house has a French drain around the foundation, and he has never seen standing water even with the heavy rains we had this Spring. He stated that he will not be disturbing any soils.

The Commissioners will vote on this application at the next regularly scheduled meeting on June 26, 2019, and agreed that Mr. Sarjeant did not need to attend that meeting.

[End of discussion 14:20]

Worcester/51 Wykeham Rd/Permit #IW-19-23/Grading and trench within the review area:

[Beg. of discussion 14:22]

Mr. Worcester, property owner, was present to discuss this application with the Commission request to grade the entrance into the garage and dig a trench for electricity within the review area. The Commissioners reviewed the plan titled "Site Analysis Plan," prepared for William W. Worcester, by William W. Worcester Architect, revision date 2/24/19, sheet SP-1. This is a revised plan from the plan that was submitted with the application.

Mr. Worcester explained that he is constructing a garage on his property which is outside of the review area but that he needs to grade the driveway for access to the garage and dig a trench for the electrical connection to the garage. He noted that the review area boundary is indicated in red and he explained that there will be less trench and it will be about 25 – 30ft further away from the brook than what was originally planned. He noted that any excavated material will be stockpiled outside of the review area. Mr. Worcester informed the Commissioners that the area of the driveway to be graded is approximately 500 sf. and the driveway will consist of processed stone. He stated that the excavator will most likely use a backhoe with a shovel for the proposed work. He pointed out the area of proposed silt fencing that will go around the stockpile.

The Commissioners were satisfied with the information that was provided. Mr. Wadelton informed Mr. Worcester that they will vote on this at the next meeting on June 26, 2019.

[End of discussion 21:28]

Roman/102 East St/Permit #IW-19-24/Proposed construction of a pool and grass sports court with associated appurtenances:

[Beg. of discussion 21:42]

Mr. Francis, Engineer, was present to review this application with the Commission. He reviewed the plan titled, "Proposed Site Development & Erosion Control Plan," prepared for Holly Parker & Marc Roman by Arthur H. Howland & Associates, P.C., revision dated 5/23/19, sheet SD.1, with the Commissioners. He explained that the property owners are proposing a swimming pool and grass sports court. He noted that to minimize grading they have opted to locate the pool, patio, terrace, etc. within the review area and the grass sports court out of the review area. He indicated the location of the wetlands, where the silt & construction fence(s) would be installed and the area of limited disturbance. Mr. Francis stated that there will be a step-down terraced area to the patio of the proposed pool and there will be a fence all around the pool. The terracing prevents them to have to change the grade to pitch down toward the proposed pool area.

There was a brief discussion regarding the proposed porous patio. Mr. Francis stated that he was not sure of the exact material, but it will be a pervious surface. He explained that the pool area will be stabilized with silt fencing and hay bales, if necessary, during construction to prevent materials from making their way into the wetlands. Mr. Francis stated that if the sports court was to be located in the proposed pool location and the pool in the proposed sports court area, it would require more fill.

The Commission questioned whether switching the location of both of the structures would require much more fill. Mr. Francis stated that he would look into it.

Mr. Francis indicated the location of the temporary access road on the plan which will be used for the equipment to enter the property. He noted that it would be an anti-tracking pad of crushed stone. He informed the Commissioners that the material from digging the pool would be reused in the proposed sports court area. The slope from the proposed sports court would be seeded and if necessary, the biodegradable matting could be used.

The Commissioners asked where the runoff from the proposed sports court would be going. Mr. Francis responded that there would be a silt fence and the bottom of the slope as well as an existing stone wall.

It was noted that a letter from the Steep Rock Association stating that they take no exception to this proposed plan was submitted with the application.

The Commissioners asked that the applicant include more information regarding the land beyond what is indicated on the plan. Also requested were the location of the trench from the pool to the house, more information on the materials that will be used and the type of construction for the patio be indicated on the plan. They felt that a site visit is necessary.

The Commissioners scheduled a site visit at 102 East Street on Wednesday, June 19, 2019, at 4:00 pm.

The Commission asked that the location of the proposed pool and sports court be staked out and the trench marked for the site visit.

[End of Discussion 39:40]

35 Potash Hill, LLC./35 Potash Hill Rd/Permit #IW-19-27/Construction of a new residence:

[Beg. of discussion 40:42]

Mr. Devendorf, Architect, from GP Shaffer Architects, was present to represent the property owner for application. He distributed copies of the plan and reviewed the proposed new residence and its location with the Commissioners. 35 Potash Hill Rd is a 3.8-acre property that has large existing wetland that runs through the middle of the property, an existing pond and the discharge of the pond that creates a watercourse that runs in the southern direction on the property. He noted that due to the zoning setbacks and the location of the review area, the only location for the septic system is in the northeast corner of the property, any structure must be located 25 feet away from the septic system. Mr. Devendorf informed the Commissioners that the proposed house would be 60 feet away from the pond.

The Commissioners and Mr. Devendorf discussed the slope of the house to the pond. The roof runoff will go into the gutters that lead to the footing drain. They will be using perforated pipe and do not expect surface water unless there is an extreme rain event. Mr. Devendorf stated that the driveway will be compressed gravel with pea gravel on top.

There was a brief discussion regarding scheduling a site visit. It was the consensus of the Commission that a site visit would not be necessary.

Mr. Wadelton stated that the Commission would deliberate on this request at its next meeting and it was not necessary for the applicant to be present.

[End of Discussion 55:05]

Other Business

Discussion regarding work being done within the review area at 52-60 River Rd:

[Beg. of discussion 55:15]

The Commission received notification that there has possibly been unauthorized work at this location.

Mr. Tsacoyannis stated that the property owner had said that he would be at tonight's meeting but is not present. He stated that there was work done in the review area last fall by Mr. Quaranta, the contractor, and the property owner is preparing the area for a meadow which encroaches slightly into the review area.

Ms. Branson stated that she raised concerns on January 9, 2019, regarding the scope of this work that was being done on this property and she referred to the minutes of the October 10, 2018 meeting. The minutes state that "Mr. Quaranta, Forest Practitioner". Ms. Branson stated that he is not a Forest Practitioner, he is a Supervising Products Harvester certified by the State and is not qualified to make recommendations regarding silviculture according to CT DEEP.

It was noted that this was made known to the Commission after the fact in January and Mr. Quaranta was not working on this property currently. Originally Mr. Haested stated that 6 to 8 cords of wood would be removed but it has been estimated that there are an additional 12 to 15 cords of wood which is concerning. Mr. Papsin thinks it is necessary for the property owner to come before the Commission to explain what is being done and to present a planting plan.

It was noted that a planting plan was part of the original as of right exemption and the property owner has not provided it to this date.

The Commissioners asked that the Enforcement Officer confirm whether there has been any work within the review area and send a report to the Commissioners regarding his findings.

Ms. Rodgers stated that she can see work being done at this property from her property on Moody Bridge and that they are currently planting.

[End of Discussion 1:10:00]

Enforcement

Activity Report:

[Beg. of discussion 1:10:30]

-23 Rabbit Hill Road

Mr. Wadelton stated that he sent out an email with general guidelines of how this discussion should proceed this evening. Ms. Dupuis will be presenting her case regarding her allegations that work has been done beyond what was permitted then Earth Tones will be presenting, and both will have the opportunity to speak as long as they deem necessary.

Ms. Dupuis gave an overview of what she has witnessed over the last couple of weeks and provided pictures for the Commissioners (all photos and copies of emails are available and part of the record in the Land Use Office). She informed the Commissioners of the previous complaints that she had made that were addressed in 2017. She noted that when the plan titled "Proposed Restoration Smith Residence," prepared for Smith, by Earth Tones, dated Sept. 8, 2017, was agreed to in 2017 and that selective saplings and invasives would be removed from the immature forest and there was no mention of clear-cutting. She stated that there was a 60' by 10' wall of saplings along the stone wall that runs parallel to her driveway one day and she called the Land Use Office and the Enforcement Officer stated that this was not in his jurisdiction because it was not in the wetlands. She was told by Mr. Turoczi of Earth Tones that this pile of saplings would create a habitat for wildlife. She requested that it be chipped.

Ms. Dupuis continued to discuss what she has witnessed since May 5 of this year. She was told by Mr. Smith, the property owner that they were planning on removing more trees, but they were not located near the wetlands or Ms. Dupuis' property. She stated that on May 6th she witnessed trees being cut in the mature woods in the northwest corner of the property at a rapid pace and informed the Land Use Office. She noted that by 1 pm, clear cutting had occurred, and they were now burning, and they did not have a permit. Ms. Dupuis claimed the burning went on into the evening and her neighbor had complained that the smoke had infiltrated her home. Ms. Dupuis referred to the email that Ms. Calhoun had submitted to First Selectman Lyon. Ms. Dupuis stated that the Enforcement Officer did make a site visit and was told that the cutting was stopping, however, she witnessed more trees being cut after he left the site. She showed an aerial photograph indicating where Ms. Calhoun's and the Defeo's property are located compared to the Smith property.

Ms. Dupuis alleged that stumps were being buried and called the Health Department. Ms. VonHolt, Sanitarian, visited the site and did not find any evidence of stumps being buried. Ms. Dupuis stated that she saw at least two flatbed trucks full of trees and stumps leaving the property. She said that after that they did install a silt fence.

Ms. Dupuis stated that trees were removed from the 12 foot right of way that the Calhoun Family owns. She informed the Commissioners that this was not part of the original permit. She continued to explain the photographs that she had taken. Ms. Dupuis had the audio transcribed from the 10-11-17 IWC meeting for this application. She noted that the audio was not clear as to where the applicant had said that the activity would take place so everyone must rely on the plans in the record.

Ms. Dupuis discussed the possible vernal pool on her property that is along the property boundary line with the Smith's property. She noted that it was the wrong time of year to determine whether this is a vernal pool. Ms. Dupuis asked Mr. Sabin, Landscape Architect,

former Inland Wetlands Commission Chairman, and member of the Conservation Commission, to look at the file as she thought that maybe she was reading it wrong.

Mr. Sabin stated that he was present as a private citizen and that he was not representing any commission or individual. He looked at the file on record and went on a site visit with Ms. Dupuis on May 19, 2019. He noted that the northwest corner of the property had been disturbed, graded, and trees cleared in the area that was labeled as mature woods on the Earth Tones plan. Mr. Sabin feels that work has been done in excess of the plan that was approved by the Inland Wetlands Commission in 2017. He informed Mr. Tsacoyannis, Enforcement Officer, of what was going on with the intent that he and the Inland Wetlands Commission would look further into it and determine whether there was a violation or not. Mr. Sabin stated that he based his findings solely on the map on file and his observations in the field.

Ms. Dupuis continued to show photographs of the timeline in which the work was being done. She is not sure as to whether the stumps were dug up. Ms. Dupuis reminded the Commissioners that they had requested that the excavator not be used anymore after the May 22, 2019 Meeting. She said that the next morning on the 23rd the excavator was being used and driven across the alleged vernal pool area so she called the Land Use Office. She showed pictures of this area. Mr. Tsacoyannis visited the site and found the excavator being used at the property along the road. Ms. Dupuis stated that the new planting plan shows a proposed studio in the area that has been cleared.

I was noted that no application has been submitted to Zoning for the studio.

Ms. Dupuis stated that the habitat has been affected as she noticed fewer amphibians in her vernal pool area.

Ms. Dupuis informed the Commissioners that this project started in the Fall of 2017 and a review should automatically happen within 18 months of the start of a project. She feels that a new permit should have been applied for because this work is not on the approved plan of 2017.

[End of presentation 1:59:19]

[Beg. of Presentation 2:05:00]

Mr. and Mrs. Turoczi of Earth Tones began their PowerPoint*** presentation explaining the work they have done at 23 Rabbit Hill Rd. Ms. Turoczi stated that she is co-owner of Earth Tones with her husband. She has a degree in Landscape Architecture, has had training in plant propagation and land surveying. Her husband is a Soil Scientist, Wetland Ecologist, and a professor in the Horticulture Department at North West Community College. Mr. Turoczi stated that he teaches soils, woody plants, and herbaceous plants. He stated that Earth Tones' goal is to protect the resource and it is a native plant nursery. He stated that the allegations brought to the Commission by Ms. Dupuis are false and their presentation will prove these allegations are without merit.

Ms. Turozci stated that they work with homeowners with landscaping with only a native plant pallet, wetlands remediation, stormwater management, their nursery is organic and they try to stay as organic as possible in their entire business. She discussed some of the accounts they have worked with and stated that they are here to defend their business and practices.

They began the PowerPoint Presentation (available as a link on the Town Inland Wetlands Commission page and in the files in the Land Use Department.

Ms. Turozci indicated the areas in question on an aerial view slide. She noted that there are preexisting paddocks that were let go. Mr. Turozci stated that the paddocks were overgrown with invasive shrubs. Mr. Turozci explained that the dashed outline area indicated on the plan from 2017 indicates the area of disturbance which is the area of violation that the previous landscaping company created and Earth Tones was hired to remediate. He noted that this was not the only area that they proposed to work in.

Earth Tones presentation included the Existing Conditions with Violations in 2017, Proposed Restoration Plan approved on 10-11-17, and Continuation of Invasive Plant Removal and Native Plant Restoration dated May 2019. Ms. Turozci explained that the Smiths were given a five-year permit and they are doing the work in phases as the budget allows. Ms. Turozci explained the timeline of the work they have done to date. She stated that they did stack the saplings to create a habitat for wildlife as opposed to chipping all of it and Ms. Dupuis complained because that stack was along her driveway. Ms. Turozci explained that they continued to remove the invasives, create walking paths, built a stone wall and a fire pit which were both outside of the review area. The Smiths eventually hired Earth Tones to bring in their wood chipper to chip the pile of saplings to address Ms. Dupuis complaint. Ms. Turozci stated that they had to remove a large tree in the violation area because the previous landscaping company had damaged the roots and it was compromised. After a complaint to the Land Use Office, Mr. Ajello, Wetlands Enforcement Officer at the time, made a site visit and found that there was no violation.

Earth Tones explained the timeline of the work that they have done throughout the month of May 2019. They stated that there was a great number of Black Locusts, which are invasive trees as well as other invasive plants that are listed by the Connecticut Invasive Plant Council. The Turoczis noted that they had to cut down some trees that were not invasives but compromised. Ms. Turozci explained that after the invasive plants are removed they replace them with native plants and shrubs. They will also be planting evergreen trees for screening purposes. Earth Tones were not required to obtain a burn permit as they were burning the invasives in the Smith's stone ringed firepit. They installed a silt fence and staked out a possible studio/shed out of the regulated area and zoning setbacks. Mr. Turozci stated that he took four truckloads of black locust trees, compromised tree trunks, and stumps which were not all within the regulated area. He informed the Commissioners that there were 13 stumps from the tree removal and explained where they were previously located on the property. He informed the Commissioners that this is not clear-cutting. Ms. Turozci stated that the trench that they dug was for the silt fence she indicated the silt fence and the area that was hand pulled. She said that they identified the natives and kept them.

Ms. Smith spoke to Mr. Neilson who issues the burn permits. She said he wanted to hear the story and to confirm that there was an existing firepit, that they weren't burning huge logs, and that they had obtained a permit to cover themselves.

It was noted that this was not an open burn and that it was contained.

Mr. Turoczi explained how they dispose of invasive plants so that they do not spread. He informed the Commission that they will be burning more Multiflora rose.

Ms. Turoczi stated that they counted 13 stumps of which 10 were Black Locust and 3 were compromised trees no more than 6 inches in diameter.

Ms. Smith stated that she went to discuss a couple of dead trees that are on the property line with her neighbors and they were in agreement if the Smith's wanted to remove them.

Mr. Turoczi explained why he did not feel that the area on the Dupuis property bordering the upper northwest corner of the Smith property was a vernal pool.

Earth Tones briefly reviewed their presentation and listed the allegations and how they are without merit and the steps they took to restore the area. It is their opinion that they have stayed within the parameters of what was permitted and they did not violate any part of it. [End of Presentation 3:57:10]

Mr. Sabin stated that he wanted to make sure that under no circumstances was he here tonight to impugn the reputation or character of Earth Tones. He feels that there should have been some clarifications in the drawings that are on record. He noted that the Mature Woods were mislabeled on the plan. Mr. Sabin stated that the plan would have been more clear if the area of disturbance encompassed the entire zone of proposed invasive removal and it should indicate what invasives were going to be removed, what native plantings are going to replace the removed invasives and how the area will be maintained.

There was a brief discussion regarding how the plans could have been more clear.

Mr. Turoczi asked the Commission if Earth Tones could continue their work so that they can remove their equipment.

Ms. Smith introduced herself as the property owner and she read a statement giving a brief history of the property as it was a farm previously. She noted that they want to maintain the woodlands and part of their plan was to hire Earth Tones to help them remove the invasive plantings. She confirmed that the alleged violations did not occur and hopes the Commission can see that with what Earth Tones has presented. She included that she had notified the neighbors about their plans and no one has ever opposed them. Ms. Smith stated that their neighbors, the DeFeos, stated that they have never seen stumps being buried on the Smith's property and they trust and appreciate the work that the Smiths have done.

Mr. Tsacoyannis gave a brief summary of his findings and a timeline of Ms. Dupuis' complaints, his site visits and his correspondence regarding this issue. He stated that Ms. Dupuis alleged three things happened; that there was work being done in the wetlands, clear cutting had occurred, and those activities were threatening her barn. Mr. Tsacoyannis informed the Commissioners that he made site visits to both Ms. Dupuis property and the Smith's property and did not see any violations. He explained that the Land Use Office responded to Ms. Dupuis' complaints as quickly as possible and followed standard procedure. He displayed his record of photographs by date of his site visits.

Mr. Sabin asked what the final planting plan is for the regulated area on this property.

Ms. Turoczi explained the continuation plan that Mr. Tsacoyannis had requested. She agreed to provide the Commission a list of things that they need to do in order to complete this job.

There was a brief discussion regarding whether this is a continuation or if it requires a new permit application. Mr. Papsin reminded the Commission that he clearly remembers Ms. Turoczi would need a 5-year permit because of the maintenance that would be necessary. The Commissioners agreed that this is not a modification but a continuation with more details on the plan.

The Commission deliberated on whether or not there has been a serious violation to Permit #IW-17-41. Mr. Bennett feels that the applicant should have come back to the Commission when they discovered that it was necessary to remove a couple of noninvasive trees. However, he does not think there has been a serious violation. Mr. LaMuniere thought Earth Tones provided a very thorough presentation and does not feel there were any serious violations. Mr. Davis stated that he understands Mr. Bennett's comment and feels that there is a difference between a violation and what the Commission could suggest as a procedure going forward. Mr. Wadelton stated that at the time of the permit approval they did not expect a detailed planning plan. The Commission clarified that the burning and the burying of stumps are not within the Inland Wetland Commission's purview unless it is happening in the wetlands or in the review area. The Commissioners agreed that there were no violations but agreed that the applicant should keep the IWC apprised of their activities during long term permits such as this to avoid confusion.

[End of Discussion 3:33:21]

-3 West Shore Rd

[Beg. of Discussion 3:33:25]

Mr. Tsacoyannis showed the Commissioners pictures of the mulched 5 - 3 ½ foot spruce trees in front of the white pines that Mr. Woodruff planted as well as the catch basin. The Commissioners agreed that the issue has been resolved and the notice of violation could be removed from the land records.

[End of Discussion 3:35:33]

Adjournment

MOTION: To adjourn at 10:35 pm, by Mr. Wadelton, passed unanimously.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Shelley White

Shelley White
Land Use Administrator

*All documents are on file in the Land Use Office

**Digital recording of this meeting are available upon request